

REMARKS

Claims 1-20 are pending in the application.

Claims 1-20 have been rejected.

Claims 1-20 remain pending in this application.

Reconsideration of the claims is respectfully requested.

I. CLAIM REJECTION UNDER 35 U.S.C. § 103

Claims 1-20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over what the Examiner characterizes as Applicant's admitted prior art (hereafter "APA") in view of U.S. Patent No. 5,602,595 to *Citta et al.*, hereinafter "Citta" in view of U.S. Patent No. 5,565,923 to *Zdepski*, hereinafter "Zdepski". The Applicant respectfully traverses the rejection.

In rejecting claims under 35 U.S.C. § 103(a), the examiner bears the initial burden of establishing a *prima facie* case of obviousness. (*In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). See also *In re Piasecki*, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984)). It is incumbent upon the examiner to establish a factual basis to support the legal conclusion of obviousness. (*Id.* at 1073, 5 USPQ2d at 1598). In so doing, the examiner is expected to make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), *viz.*, (1) the scope and content of the prior art; (2) the differences between the prior art and the claims at issue; and (3) the level of ordinary skill in the art. In addition to these factual determinations, the examiner must also provide "some articulated reasoning with some

rational underpinning to support the legal conclusion of obviousness.” (*In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir 2006) (cited with approval in *KSR Int’l v. Teleflex Inc.*, 127 S. Ct. 1727, 1741, 82 USPQ2d 1385, 1396 (2007))).

Absent such a *prima facie* case, the applicant is under no obligation to produce evidence of nonobviousness. MPEP § 2142, p. 2100-125 (8th ed. rev. 5, August 2006). To establish a *prima facie* case of obviousness, three basic criteria must be met: *Id.* First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. *Id.* Second, there must be a reasonable expectation of success. *Id.* Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *Id.* The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant’s disclosure. *Id.* (U.S. Patent No. 5,602,595), hereinafter “Citta.”

The “Background of the Invention” section of the application as filed describes conventional MPEG-2 compression. In particular, it describes the MPEG-2 packetized elementary stream (PES) on page 7, including that the PES includes packet header 405, optional PES header 410, and associated packet data 415. Packet header 405 comprises packet start code prefix 420, stream identifier (ID) 425, and PES packet length indicator 430. All of the fields after PES packet length indicator 430 are optional.

Because the PES includes numerous optional fields, it is in no way a “fixed-size program packet” as described in independent claims 1, 6, 11, and 18. Nothing in the background section of

the specification, which the Examiner characterizes as “admitted prior art,” describes reformatting PES packets of disparate size into fixed-size program packets, as required by each independent claim.

The Examiner now suggests that Citta discloses a suitable fixed-size program packet. Citta describes a system that encodes variable length elementary streams of data into a multilevel symbol signal comprising a plurality of multiplexed fixed length data packets without sync information. The fixed length data packets are arranged in fields of repetitive data segments, each of which includes a data segment sync and each field of which includes a field sync.

Claim 1 requires that each of the received PES packets is reformatted into at least one fixed-size program packet having a header and a payload, the header defining a payload content. This is not taught or suggested by the art of record. In particular, while Citta includes a fixed-length packet, the header of Citta’s packet does not define the payload content, as claimed. The Examiner finally concedes that this is not taught by Citta. Citta’s teaching is only useful for the concept of a fixed packet size, though that fixed-size packet doesn’t conform to the claimed packet. There is no teaching or suggestion in APA that a packet could or should include a header defining a payload content.

The Examiner now cites to Zdepski for a teaching of a header that defines a payload. Zdepski does teach a field, as shown in Figs. 6 and 7, that defines the payload:

The HD field is a service specific header which specifically defines the payload. For example, if the particular service is designated to provide television programming, respective payloads of the transport

packets of that service type may include audio data, video data, or related auxiliary data. The HD field thus indicates the particular payload type for the particular packet. *Col. 5, lines 45-51.*

FIG. 6

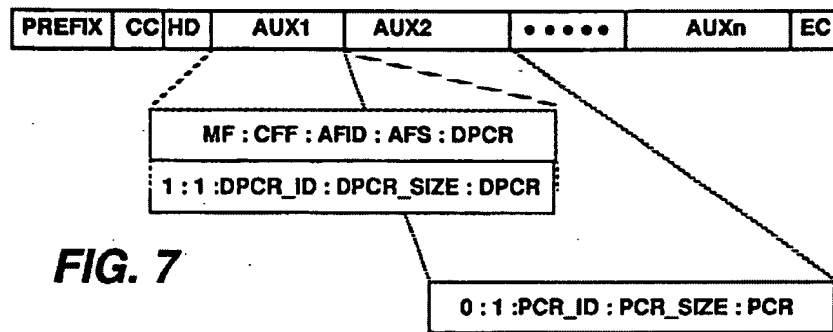


FIG. 7

However, there is no motivation or reason at all for one of skill in the art to add an additional field to Citta's fixed packet to function as Zdepski's HD field. Certainly the Examiner's stated motivation, "to transmit data more efficiently" is both unsupported in the art and incorrect. Absent some other advantage, an additional field in a packet results in additional bits to be transmitted and therefore less efficiency.

Moreover, there is no expectation of success or any advantage at all to adding an additional field in accordance with Zdepski to the combination of APA and Citta. Citta is clear that the packet, when received by the ATV, must convert its modified 207-bit packet (including a 3-bit header), see *col. 3, lines 26-37*, back into a standard MPEP transport packet:

Timing control signals are applied to MPEG sync reinsertion block 40 for enabling the proper reinsertion of the MPEG sync byte in each processed transport packet. The output of MPEG reinsertion block 40 is therefore in the standard MPEG transport packet format (188 bytes including a 4 byte header) which is applied to a transport demultiplexer 44 for separation of the MPEG compressed video and the compressed audio (as well as any auxiliary data) into the variable length PES packets. *Col. 3, lines 59-67.*

It is clear that Citta teaches away from any additional field in the header – for transport, Citta teaches reducing the packet size from 4 bits to 3 bits, then when received, Citta teaches reconverting to a standard MPEG packet having 4 bits. Nothing in Citta or APA would lead one of skill in the art to have any expectation of success or see any advantage to adding an additional field to the header.

Claim 1, and dependent claims 2-5, therefore distinguish over any combination of APA, Citta, and/or Zdepski.

Claim 3 requires that the fixed size of said at least one fixed-size program packets is a multiple of a sector size of said storage disk. This feature is not taught or suggested by any cited art, alone or in combination, and the Examiner erroneously states that some relevant teaching is found in APA. The Examiner has repeatedly failed to identify any such teaching, but has simply indicated that a “storage disk, DVD or hard disk” has sectors. The Examiner has also alleged that “it would be obvious to one of ordinary skill in the art, to have at least one fixed-size program packets is a multiple of a sector size of said storage disk, in order to increase the recording capacity.” This statement is unsupported in any cited art. Certainly nothing in the art of record, or in the knowledge of one of ordinary skill in the art, teaches or suggests specifically setting the size of a fixed length

program packet to a multiple of a sector size of a storage disk. If the Examiner believes this is a well-known technique, and is taking such official notice, the Examiner is requested (and therefore required) to provide documentary support for the same.

Claim 4 requires that the header of each fixed-size packet defines at least one of stream type, timing information and picture information. This feature is not taught or suggested by APA, Citta, or Zdepski, alone or in combination, and the Examiner erroneously states that some relevant teaching is found in APA. Nothing in APA teaches such a fixed-size packet, that is a reformatted disparate-sized PES packet, as claimed.

The Examiner has failed to address the limitations of the remaining claims, and so fails to make even a *prima facie* obviousness rejection.

Claims 6 and 11 requires a digital video recorder, a storage disk, and storing fixed-size program packets into a multiplexed program stream in the storage disk. This feature is not taught or suggested by APA, Citta, or Zdepski, alone or in combination, and the Examiner erroneously states that some relevant teaching is found in APA. Nothing in APA teaches reformatting disparate-sized PES packets fixed-size program packets and storing the fixed size program packets into a multiplexed program stream in a storage disk, and nothing in Citta discusses storing anything at all. Dependent claims 7-10 and 12-17 similarly distinguish over any combination of APA, Citta, or Zdepski.

Claim 18 includes similar limitations as claims 6 and 11. This feature is not taught or suggested by APA, Citta, or Zdepski, alone or in combination, and the Examiner erroneously states

that some relevant teaching is found in APA. Nothing in APA teaches storing fixed size program packets into a multiplexed program stream in a storage disk, and nothing in Citta discusses storing anything at all. Dependent claims 19-20 similarly distinguish over any combination of APA, Citta, or Zdepski.

Because each independent claim includes limitations not found in any cited art, and not described or in any way “admitted” by the Applicant as prior art, all independent claims and their respective dependent claims should be allowed over all art of record.

Further, the Examiner’s general statement of motivation for combining APA and Citta is unsupported in the art. The Examiner states “it would have been obvious ... to modify the prior art by reformatting the PES packets into fixed length packets in order to increase the efficiency of transmitting data.” This motivation is not found or supported in the art, and is not generally correct. There is no showing at all that the fixed-length packets are more efficient for transmitting data. In fact, to produce fixed-length packets from variable-length packets, generally speaking, additional padding bits must be used – thereby increasing the number of bits that must be transmitted and correspondingly decreasing transmission efficiency.

Applicant respectfully notes that the Examiner appears to believe that an unsupported statement of “in order to transmit the data more efficiently” can function as motivation to combine any references, whether or not such a statement is actually true.

All rejections are traversed.

Applicant denies any statement, position or averment of the Examiner that is not specifically

addressed by the foregoing argument and response. Applicant reserves the right to submit further arguments in support of their above stated position as well as the right to introduce relevant secondary considerations including long-felt but unresolved needs in the industry, failed attempts by others to invent the invention, and the like, should that become necessary.

Accordingly, the Applicant respectfully requests the Examiner to withdraw the § 103 rejection with respect to these claims.

CONCLUSION

As a result of the foregoing, the Applicant asserts that the remaining claims in the Application are in condition for allowance, and respectfully requests that this Application be passed to issue.


If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at *wmunck@munckbutrus.com*.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

MUNCK BUTRUS P.C.

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